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Mi Kim 59 Marial Rose Dr. Portsmouth, RI 02871				
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EXAMINER				
AFZALI, SARANG				
ART UNIT		PAPER NUMBER		
3726				
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10/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/068,243

## Applicant(s)

SPIESS, BRYAN

## Examiner

SARANG AFZALI

## Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14-33 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-27 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The applicant's amendment filed on 6/30/2008 has been fully considered and made of record.

***Drawings***

2. The drawings were received on 6/30/2008. These drawings are acceptable.

***Specification***

3. The disclosure is objected to because of the following informalities: the specification should include a section with the heading of "Brief Description of the Drawings" describing briefly what each figure is depicting. Note that, should any of these figures show only the old, state of the art design, then that particular figure should be designated by the "Prior Art" legend.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 14-16, 18-25, 27, and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al. (US 4,203,509).

As applied to claims 14-16, Thompson et al. teach an aircraft roller system (col. 1, line 6) comprising:

- (a) a single piece cylindrical body (17, Fig. 1), said body having a length and a diameter; and
- (b) an aperture extending longitudinally along and through the center of said body, wherein said body consists essentially of a polymer (col. 2, lines 12-15 and col. 3, lines 21-30, "super-tough nylon").

As applied to claim 18, Thompson et al. teach that the ends of the roller (10) are shaped to provide a shoulder (the area where element 18 encroaches into element 17, Fig. 1).

As applied to claims 19-22, Thompson et al. teach the invention cited including the physical properties of the polymeric material.

Regarding the limitations "impact strength of at least 0.5 (ft. lbs./inch)", "flexural strength of at least 20 psi", "compressibility strength of at least 20 psi and 200 psi", it is noted that Thompson et al. inherently teaches these physical properties. Thompson et al. teach that the polymer used in the roller is made from "nylon" (see col. 2, lines 12-15 and col. 3, lines 21-30). On page 5, second full paragraph of applicant's specification, applicant describes that suitable polymers include nylon among with other polymers. Therefore, since both the prior art and the applicant uses "nylon", it is inherent that Thompson et al. inherently teaches the claimed physical properties of the polymer. Applicant has not provided the physical properties of each of the polymer materials described in the specification at page 5, second full paragraph, therefore, it is

understood that all of the described polymer materials on page 5, second full paragraph of applicant's specification meet the claimed "impact strength of at least 0.5 (ft. lbs.)/inch, a flexural strength of at least 20 psi, and a compressibility strength of at least 20 psi & 200 psi", with "nylon" as taught by Thompson et al. being among the polymer materials. Therefore, Thompson et al. also inherently teach the limitations of claims 19-22.

Note that Thompson et al. teach that for normal loads the cylindrical surface of the tire (17) is the only surface to contact the load (col. 2, last paragraph) and the flange surfaces (15) is only relied to take any increasing overloads which are usually transient (col. 3, lines 1-5). As such, the single piece, cylindrical body consisting essentially of polymer (17) taught by Thompson et al. meets the claimed "strength" requirements and the flange (15) would only add extra strength to the roller body.

As applied to claims 23-25, Thompson et al. teach the invention cited including the claimed ranges for the length and diameter for the body of the roller (col. 3, lines 15-19).

As applied to claim 27, Thompson et al. teach the invention cited including the roller used in an aircraft conveyor system (use in multiple to establish a light-weight high-strength roller floor for cargo-carrying aircraft, col. 1, lines 4-6).

As applied to claims 30-32, note that the Applicant is claiming a product in a product-by-process claim (a roller made by steps a-c) and as such, the patentability of

product does not depend on its method of production. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985) (citing *In re Pilkington*, 411 F.2d 1345, 1348, 162 USPQ 145, 147 (CCPA 1969)). If a product in a product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even though the prior product is made by a different process. *Id.* citing *In re Marosi*, 710 F.2d 799, 803, 218 USPQ 289, 292-93 (Fed. Cir. 1983); *Johnson & Johnson v. W.L. Gore*, 436 F. Supp. 704, 726, 195 USPQ 487, 506 (D. Del. 1977); see also *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974).

The instant invention is not directed to a method of making the roller, but to the roller itself which is a product. The final product is structurally the same as Thompson et al. as discussed in rejection of claims 14 and 16, above.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 17, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (US 4,203,509).

As applied to claim 17, Thompson et al. teach the invention cited with the exception of using the claimed acetyl copolymer.

At the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art, to have used the claimed polymer because applicant has not disclosed that the claimed polymers provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally as well with the nylon polymer taught by Thompson et al. or acetyl copolymer as claimed, because either type of polymer perform the same function of providing a roller surface that has the desired compressibility and strength. Furthermore, in applicant's specification, at page 5, lines 8-13, there is a listing of different polymers and all are suitable for the rollers. There is no indication that one polymer is better than another.

As applied to claim 26, Thompson et al. teach the invention cited with the exception of the claimed length of the roller body.

At the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art, to have used the claimed length for the roller body because applicant has not disclosed that the claimed length provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally as well with the roller body length taught by Thompson et al. or roller body length as claimed, because either length of the roller body performs the same function of providing a desired roller surface for holding and carrying loads. Furthermore, in applicant's specification, at page 4, lines 17-21, there is a listing of different lengths

suitable for the rollers. There is no indication that one certain length is better than another.

As applied to claim 33, note that the Applicant is claiming a product in a product-by-process claim (a roller made of acetyl copolymer made by steps a-c of claim 30) and as such, the patentability of product does not depend on its method of production. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985) (citing *In re Pilkington*, 411 F.2d 1345, 1348, 162 USPQ 145, 147 (CCPA 1969)). If a product in a product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even though the prior product is made by a different process. *Id.* citing *In re Marosi*, 710 F.2d 799, 803, 218 USPQ 289, 292-93 (Fed. Cir. 1983); *Johnson & Johnson v. W.L. Gore*, 436 F. Supp. 704, 726, 195 USPQ 487, 506 (D. Del. 1977); see also *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974).

The instant invention is not directed to a method of making the roller, but to the roller itself which is a product. The final product is structurally the same as Thompson et al. as discussed in rejection of claim 17, above.

### ***Response to Arguments***

8. Applicant's arguments filed 6/30/2008 have been fully considered but they are not persuasive. Applicant's argument regarding the indefiniteness of claim 15 is persuasive and as such the rejection of claim 15 under 35 USC 112, second paragraph is withdrawn.



Applicant mainly argues (Remarks, page 2, last paragraph, lines 5-7) that "unlike the roller of the instant invention whose body consists essentially of a polymer, the Thompson reference describes a roller made of a tubular body of aluminum having flanges with only tire of elastomeric or plastic material." and further argues (Remarks, page 3, paragraph 2) that "In sharp contrast, the roller of Applicants' instant invention has a body that consists essentially of a polymer, wherein the polymer bears, along the central span of its body, **all types of load** of the air-freight industry." The Applicant concludes (Remarks, page 4, paragraph 3) that "In the instant application, Applicants independent claim 14 is directed to an aircraft roller whose body consists essentially of a polymer. The Thompson reference does not teach that an aircraft roller, which must **withstand the full variety of loads and abuses**, can have a body that consists essentially of a polymer. The Thompson reference does not suggest that an aircraft roller can have a body that consists essentially of a polymer. Nor, does the Thompson reference motivate one of ordinary skill in the art to make an aircraft roller with a body that consists essentially of a polymer." (Emphases are added by the Examiner).

The Examiner respectfully disagrees with the above arguments. The Examiner believes that considering the broadest reasonable claim interpretation, the element (17) of Thompson et al. which is a single piece, cylindrical body consisting essentially of polymer material used as a cargo roller in the aircraft industry, meets the limitations of claims 14-16. Thompson et al. explicitly teach (paragraph bridging cols. 2 & 3) that roller (17) carries the normal loads and that flanges (15) of element (18) is only relied upon to carry any overloads.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., all types of load, withstanding full variety of loads and abuse) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As such, the element (17) of Thompson et al. alone is capable of carrying cargo loads and as such, Thompson et al. alone teaches the invention cited in claims 14-16, 18-25, 27 and 30-32 and one of ordinary skill in the art would have expected applicant's invention to perform equally as well with either Thompson et al.'s polymer material and roller length or claimed roller material and length (claims 17-26).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARANG AFZALI whose telephone number is (571)272-8412. The examiner can normally be reached on 7:00-3:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on 571-272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarang Afzali/  
Examiner, Art Unit 3726  
10/6/2008

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